

ESTTA Tracking number: **ESTTA618025**

Filing date: **07/28/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Froosh AB		
Entity	aktiebolag	Citizenship	Sweden
Address	Hammarby KAJ 24 Stockholm, 12062 SWEDEN		

Attorney information	Joshua M. Gerben, Esq. Gerben Law Firm, PLLC 1050 Connecticut Ave NW 10th Floor Washington, DC 20036 UNITED STATES jgerben@gerbenlawfirm.com Phone:202-294-2287
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Registration Subject to Cancellation

Registration No	4430840	Registration date	11/12/2013
Registrant	Honey Dew Associates, Inc. 2 Taunton Street Plainville, MA 02762 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 1998/05/04 First Use In Commerce: 1998/05/11 All goods and services in the class are cancelled, namely: Non-carbonated, non-alcoholic fruit-flavored frozen beverages, sold only out of frozen drink mixers at establishments owned by Honey Dew Associates, Inc. or franchisees' restaurants or carry-out service premises or other establishments operated by or under Honey Dew Associates, Inc

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	FROOSH_Petition For Cancellation_4430840.pdf(149724 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Joshua M. Gerben/
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Name	Joshua M. Gerben, Esq.
Date	07/28/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Froosh AB	§	
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. _____
	§	
Honey Dew Associates, Inc.	§	Registration No. 4430840
	§	
Registrant.	§	Date of Registration: 11/12/2013

Petition for Cancellation

Froosh AB (“Petitioner”), is a corporation organized under the laws of the country of Sweden and has a principal place of business at Hammarby KAJ 24, Stockholm, Sweden, 12062. Petitioner believes that it is damaged by Registration No. 4430840 and hereby petitions to cancel the same under the provisions of 15 U.S.C. § 1064(3). As grounds for cancellation, Petitioner asserts that:

1. Petitioner is a manufacturer of beers, mineral and aerated waters, fruit drinks, fruit juices and syrups for making beverages.
2. Upon information and belief, Honey Dew Associates, Inc. is a Massachusetts corporation with a principal place of business of 2 Taunton Street, Plainville, Massachusetts 02762 (the “Registrant”).
3. On March 21, 2012, Registrant filed an application to register the mark “FROOSH” and design for “non-carbonated, non-alcoholic fruit-flavored frozen beverages, sold only out of frozen drink mixers at establishments owned by Honey Dew Associates, Inc. or franchisees' restaurants or carry-out service premises or other establishments operated by or under Honey Dew Associates, Inc.” (the “Registrant’s Mark”).
4. Registrant obtained U.S. Registration No. 4430840, issued on November 12, 2013, for the Registrant’s Mark (“Registrant’s Registration”).

5. On October 2, 2012, Petitioner filed Application Serial Number 85746198 to register the mark “FROOSH FRUIT: BOTTLED” and design for “beers; mineral and aerated waters; fruit drinks; fruit juices; syrups for making beverages”, in International Class 032.

6. On March 17, 2014, the examining attorney reviewing Petitioner’s application issued an Office Action, refusing Petitioner’s application because of a likelihood of confusion with Registrant’s Registration.

7. Upon information and belief, Registrant is not currently using the Registrant’s Mark in commerce.

8. Upon information and belief, Registrant has abandoned the Registrant’s Mark within the meaning of Section 45 of the Trademark Act, 15 U.S.C. § 1127 by discontinuing use of said mark with no intent to resume said use.

9. Upon information and belief, due to Registrant’s abandonment of its mark, the Registrant’s Mark has lost all capacity as a source indicator for Registrant’s goods.

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WHEREFORE, Petitioner is sustaining harm because Registrant's Registration of the abandoned trademark FROOSH is preventing the registration of Petitioner's trademark for FROOSH, and, therefore the Petitioner prays that Registration No. 4430840 be cancelled pursuant to 15 U.S.C. § 1064(3) because the "FROOSH" trademark has been abandoned by Registrant.

Dated: July 28, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Gerben", with a stylized flourish at the end.

Joshua M. Gerben, Esq.
Attorney for Petitioner

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10th Floor
Washington, DC 20036
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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2014, a true and correct copy of the foregoing Petition for Cancellation was served on the Registrant via overnight express mail, at the following address:

Honey Dew Associates, Inc.
2 Taunton Street
Plainville, MA 02762

A handwritten signature in black ink, appearing to read 'J. Gerben', with a stylized flourish at the end.

Joshua M. Gerben, Esq.
Attorney for Petitioner

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